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Date: March 10, 2010/Jessica Sexton /
Jessica Sexton**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of:

Applicant(s): Clifton H. Bromley, *et al.*

Examiner: Adrian L. Kennedy

Serial No: 10/670,582

Art Unit: 2129

Filing Date: September 25, 2003

Title: GRAPHICAL USER INTERFACE

Mail Stop Amendments
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY TO RESTRICTION REQUIREMENT DATED FEBRUARY 16, 2010

Dear Sir:

This Reply is in response to the Restriction Requirement mailed on February 16, 2010 in connection with the above-identified patent application.

The Examiner requires restriction to one of the following eleven groups of claims:

Group I – Claims 1-17 are drawn to device analyzer, a human machine interface, a communication component and a processing component that renders, classified in class 706, subclass 60;

Group II – Claims 18-23 are drawn to device analyzer, an identification component, an artificial intelligence component, a communications component, and a processing component classified in class 706, subclass 60;

Group III – Claims 24-28 and 41-44 are drawn to converting 3 dimensional data into 2 dimensional data or vice versa and displaying the data in disparate views, classified in class 706, subclass 60;

Group IV – Claims 29-32 are drawn to a software object that determines properties, limitations, or software plug-ins, a human machine interface generator, and a communications component, classified in class 706, subclass 60;

Group V – Claims 33-34 are drawn to determining formatting requirements, formatting data, delivering the formatted data, classified in class 706, subclass 60;

Group VI – Claim 35 is drawn to receiving data from a physical device to a human machine interface, comparing format of the data to known formats, rendering data, classified in class 706, subclass 60;

Group VII – Claims 36 and 45 are drawn to mapping data path information, determining I/O communication protocol of the physical device, formatting data in accordance with the device properties, creating one or more software objects, classified in class 706, subclass 60;

Group VIII – Claim 37 is drawn to determining properties, limitations, or software plug-ins of the devices, means for delivering the formatted data, classified in class 706, subclass 60;

Group IX – Claim 38 is drawn to ascertaining formatting requirements, properties, limitations or software plug-ins, determining whether a format of data is known, determining the format of unknown data received by a Human Machine Interface, rendering the data in the HMI, mapping data path information to data delivered to the physical device, classified in class 706, subclass 60;

Group X – Claims 39 and 46-48 are drawn to mapping data path information to data delivered to the device, generating at least one software object, formatting data in accordance with determined properties, creating software objects that represent Input/Output interface of devices, classified in class 706, subclass 60;

Group XI – Claim 40 is drawn to determining properties, limitations, or software plug-ins associated with devices, presenting 3-dimensional data as 2-dimensional data or vice versa,

displaying data in a plurality of disparate views, associating respective views with a zoom level, classified in class 706, subclass 60.

In order to expedite fruitful prosecution of the subject application, Applicants' representative elects with traverse Group I (Claims 1-17 drawn to device analyzer, a human machine interface, a communication component and a processing component that renders, classified in class 706, subclass 60) for further prosecution on the merits.

However, Applicants' representative respectfully maintains that reconsideration and withdrawal of the restriction requirement under 35 U.S.C. §121 is appropriate for at least the following reasons. The restriction requirement is improper under M.P.E.P. §803.

"If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions" (emphasis added). M.P.E.P. §803. The test for restriction between patentably distinct inventions is two-part in nature. First, the inventions must be independent or distinct as-claimed. See M.P.E.P. §803(I)(A). Second, examination of the claims must present a serious burden on the Examiner if no restriction is required. See M.P.E.P. §803(I)(B). See also M.P.E.P. §808. The claims as presented do not meet either prong of the test to require a restriction, and alternatively, an 11 way restriction requirement is unreasonable in consideration of the present application.

Addressing the second prong, examination of the claims does not impose a serious burden on the Examiner. As the Restriction Requirement dated February 16, 2010 notes, all 11 identified groups fall into the same classification (class 706, subclass 60). To this end, search and examination related to the subject claims will not significantly increase the Examiner's duties relating to this application, and Applicants' representative respectfully submit that a prima facie case of distinctiveness has thus not been met.

The Restriction Requirement contends that requiring restriction is proper as "the inventions require different field of search", citing M.P.E.P. §805.05. However, M.P.E.P. §805.05 is inapposite to restriction based on field of search. In addition, all claim groups exist in the same field of search, as they share the same class and subclass. In this regard, the USPTO's own classification and sub-classification system used for the very purpose of searching thus agrees that all of the identified groups of claims belong to the same field of search, a matter conceded in the Restriction Requirement.

In order to show the increased burden of examination, the Examiner must set forth reasons for the restriction requirement. M.P.E.P. §808.02. This showing can be made by explaining the separate classifications of claim groups, a separate status in the art of claim groups, or differing fields of search. M.P.E.P. §808.02(A)-(C). The Restriction Requirement sets forth a series of search combinations that the Examiner maintains would present a burden upon which to proceed. However, the prejudice to Applicants represents in terms of length of examination and 11 times the filing fees to pursue 11 potential applications represents a greater burden than that asserted in the Restriction Requirement.

In addition, returning to the first prong of the test outlined *supra*, the invention as-claimed does not embody multiple distinct inventions. “Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. §121 is never proper.” M.P.E.P. §808.02. The subject application relates to services for providing flexible and powerful Human Machine Interfaces (HMI) for industrial control systems. These HMIs are flexible in that they overcome the limitations of discrete legacy systems which lack compatibility among one another in part or whole. The independent claims all recite systems or methods generally directed toward this general subject matter, and are disclosed as related embodiments in the application. Thus, the claims do not meet the standard for patentably distinct groups set forth in M.P.E.P. §808.02.

As with proving increased burden of examination, the Examiner must detail reasons regarding any conclusion of distinct inventions. “The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.” M.P.E.P. §808.01. The Restriction Requirement directs Applicants’ representative to the test set forth in M.P.E.P. §806.05(c) regarding two-way distinctiveness in relation to the restriction. This test requires that the claimed combination does not require the particulars of the subcombination as claimed for patentability, and that the subcombination can be shown to have utility either by itself or in another materially different combination. M.P.E.P. §806.05(c). Applicants’ representative respectfully disagrees with respect to the conclusions set forth in the Restriction Requirement.

Finally, an 11-way restriction requirement to a group of 48 commonly related claims is simply unreasonable, and places an unreasonable financial burden and prejudice on Applicants not contemplated by the patent laws, as noted above.

In view of the foregoing, it is apparent that the previously presented claims do not impose a substantial examination burden on the Examiner or recite multiple distinct claim sets. Accordingly, reconsideration and withdrawal of the outstanding restriction requirement is respectfully requested.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [ALBRP314US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact Applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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